



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

March 28, 2022

Re: FOIA Request NLRB-2022-000662

Dear Virginia Annable (Hickory Daily Record):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on February 28, 2022, in which you seek “all documents not available online” in *Pain Relief Centers, P.A.*, Case Nos. 10-CA-260563 and 10-CA-266324. You assumed financial responsibility for the processing of your request in the amount of \$35.00.

We acknowledged your request on February 28, 2022. By email with a member of my staff on March 17, 2022, you agreed to exclude the hearing transcripts and exhibits from your request.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency’s electronic casehandling system, NxGen, I have determined that certain records responsive to your request are part of an investigative file in an open case before the Agency, and therefore, are exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Here, the two requested cases remain open and pending before the Agency, and the release of any investigatory records in either of these case files at this time could harm the open proceedings. Therefore, any investigatory records in the requested case files are being withheld in full pursuant to Exemption 7(A).

Your request is granted to the extent that I have attached the formal records in these cases which are available to the public pursuant to NLRB FOIA regulations (excluding the hearing transcripts and exhibits and those not available online/hyperlinked on the Agency’s website case page).

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C.

Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the cases close, that is, once a Board decision and/or court order issues and there has been full compliance, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of these cases can be tracked on the Agency website at www.nlr.gov by going to the Cases & Decisions tab, clicking case search, entering the individual case numbers in the search box and viewing the case pages or by clicking the links here: <https://www.nlr.gov/case/10-CA-260563> and <https://www.nlr.gov/case/10-CA-266324>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (202) 368-1927 or by email at Jodilyn.Breirather@nlrb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nlrb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

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Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nllrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (164 pages)